Filed 3/20/19 Teferi v. Ethiopian Sports Federation in North America CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

ASFAW TEFERI, Plaintiff and Appellant, v. ETHIOPIAN SPORTS FEDERATION IN NORTH AMERICA et al., Defendants and Respondents.	B282403, B285127 (Los Angeles County Super. Ct. No. BC632183)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mel Red Recana, Judge. Affirmed.

Neil C. Evans for Plaintiff and Appellant.

Demissie & Church and Derege Demissie for Defendants and Respondents.

Plaintiff and appellant Asfaw Teferi appeals from a trial court's order granting a special motion to strike under Code of Civil Procedure section 425.16,[1] filed by respondents Ethiopian Sports Federation in North America and Getachew Tesfaye (collectively, ESF), and awarding ESF attorney fees and costs incurred in connection with its prosecution of the anti-SLAPP motion. We conclude that Teferi failed to make a showing of minimal merit to state a legally sufficient claim, and that the trial court did not err in granting either ESF's anti-SLAPP motion or its subsequent motion seeking attorney fees and costs. Accordingly, we affirm.

BACKGROUND

Teferi, formerly a member of ESF's Board of Directors (Board), prevailed in a defamation action filed in November 2006 against ESF. Teferi argued that he voluntarily resigned from the Board following a vote of "no confidence" by the Board's executive committee. ESF claimed Teferi had been involuntarily removed from the Board for egregious conduct. A jury rejected ESF's contention, and determined that ESF falsely and retroactively characterized Teferi's voluntary

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[1] Code of Civil Procedure section 425.16, provides a procedure for striking complaints in lawsuits commonly known as "SLAPP" suits (strategic lawsuits against public participation), "litigation of a harassing nature, brought to challenge the exercise of protected free speech rights." (*Fahlen v. Sutter Central Valley Hospitals* (2014) 58 Cal.4th 655, 665, fn. 3.) Further undesignated statutory references are to the Code of Civil Procedure.

resignation as an involuntary "impeachment," and awarded Teferi $100,000 in damages. We affirmed that judgment in January 2016. (*Teferi v. Ethiopian Sports Federation in North America, et al.* (Jan. 12, 2016, B249880) nonpub. (*ESFNA*).)[2]

Between February and late April 2016, ESF published and posted on its website a press release, dated February 9, 2016, which stated:

> **"Ethiopian Sport Federation in North America Says Lawsuit is Old News and the Organization is 'Stronger than Ever!'**
>
> "The Ethiopian Sport Federation in North America (ESFNA) commented on the recent outcome of the appeal in the case against [*sic*] that dates back more than 8 years. The case brought by one of ESFNA's former Board Member [*sic*] has been pending in the California court system since 2007. In January 2016 the Appellate Court ruled against ESFNA. The judgment requires ESFNA to pay the plaintiff, Asfaw Teferi $100,000. While ESFNA disagrees in the strongest way possible with the outcome and ruling of the lower court, it accepts the judgments.
>
> "[Mr. Teferi] had served in ESFNA as a Board and Executive Committee (EC) member as an Internal Auditor and Secretary. Mr. Teferi sued ESFNA alleging Defamation of Character. The allegation arose after Mr. Teferi was removed from his EC position by a near unanimous vote of the Board of Directors (Board) at the January 2003 ESFNA annual meeting.
>
> "The case against Mr. Teferi and the other six EC members stemmed from an allegation and investigation of a cover-up of a

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[2] The remittitur was issued on March 16, 2016. Shortly before oral argument, Teferi requested that we take judicial notice of the *ESFAN* opinion, which is already part of the appellate record. The request is denied.

financial liability in a [*sic*] relation to a hotel contract in violation of the terms with the Westin Hotel in Santa Clara, California. The violation of the contract occurred in 2001 and ESFNA Board didn't know about it until October 2002. In the course of the disclosure, the Board concluded that Mr. Teferi should have known about it as an Internal Auditor and Secretary that covered two offices in the EC. The cover-up investigation was reason for four other EC members to either voluntarily resign or not seek reelection. Mr. Teferi refused to voluntarily leave and the Board voted to remove him from his position.

"In 2005, Mr. Teferi tried to return to ESFNA Board as Los Angeles Stars soccer club representative. The ESFNA EC and the Board, citing the circumstance of his removal from office two years earlier, and the directives given by the Board barring such individuals from serving in the Board/EC, refused to accept him as a Board of Director [*sic*]. In May 2005, in a teleconference meeting, the Board amended the January 2003 minute [*sic*] regarding Mr. Teferi's resignation to reflect that the vote entailed a decision that he can't come back as a Board Member.

"Contrary to the fact that he was removed from his EC position by a near unanimous vote of the Board, Mr. Teferi claimed he resigned willingly in 2003. Based on his disputed testimony where, among other things, he cried profusely to convince the jury that he was shunned by the Federation and forbidden from attending the Federation's annual tournament; [*sic*] and star supporting witnesses from his club and the accused architect of the financial cover-up, the jury sided with Mr. Teferi. The Federation has never refused him permission to attend the annual tournament. In fact, for the service he rendered, he was awarded plaques in 2003 and 2008 and sited [*sic*] in ESFNA publications. Mr. Teferi has attended several tournaments since 2003 and in [*sic*] some occasions, with free VIP passes. He was part of the 2012 ESFNA Alumni game in Dallas.

"The general sense of the verdict at the Federation is that it was a miscarriage of justice. ESFNA vehemently argued internal

communication amongst its Executive and Board and member clubs should be Protected Speech and excluded from frivolous defamation law suits. ESFNA's routine communication to one of its member clubs should NOT have been cause for defamation. Therefore, concerned Board Members and friends of the Federation believed the jury's verdict needed to be appealed to a higher court. It was understood that the chances of reversing a jury verdict was [*sic*] very minimal. However, the principle of such injustice demanded it.

"ESFNA believes gaps in its bylaws, its decision making based on fraternity and the lack of legal guidance contributed to the outcome of this case. As of 2015, ESFNA has approved new bylaws that are intended to address these gaps. In addition, despite being a nonprofit corporation with limited financial resource, [*sic*] ESFNA has retained a law firm to regularly address legal matters and provide legal guidance to the Board as our traditional ways don't always work here in the United States if one or some are bent to take advantage of.

"As ESFNA works tirelessly to bring Ethiopians together, it is also a very well-known fact that there are detractors from many quarters that try to put an end to our lofty ideals of putting Ethiopians and *Ethiopiawinet* first. ESFNA considers this frivolous assault against it as an assault against ALL Ethiopians. Ethiopian history is replete with acts of betrayal [sic] attempts to tear down formidable organizations that promote our culture, history, and respect and love for our rich heritage. Truth crushed to earth always rises up; ESFNA strongly believes in the right course it took to protect the organization it is entrusted with by Ethiopians. History will vindicate our organization; but ALL Ethiopians need to be extra vigilant to protect our enduring institutions and no other civic organization can claim the decades of service to our community that ESFNA has provided each and every year. ESFNA shall continue to bring our people together in a spirit of brotherhood and sisterhood year after year and provide the space for the celebration of our culture and its preservation for posterity.

"Again, ESFNA reiterates its commitment to its founding principles: **Bringing Ethiopians Together!** This is not the first time ESFNA had faced seemingly insurmountable challenge [*sic*]. Please be assured our faith is in the Ethiopian Community that sustained us for the last 33 years and the Federation will live beyond the latest challenge inflicted on it by another of its own. ESFNA once again thanks the Ethiopian community for its continued support and look [*sic*] forward to seeing you in Toronto, Canada from July 3 - 9, 2016.

"Ethiopian Sports Federation in North America (ESFNA): Bringing Ethiopians Together™

"*ESFNA prides itself in creating a unique stage where Ethiopians of all backgrounds, ethnicity, religions and political convictions can come together to celebrate our long enduring unique heritage and diversity that has become our strength through the millenniums. Our goal and vision over the past 30 years has been to maintain ESFNA's annual festivities as the Mecca where ALL Ethiopians and supporters can come together once a year to create our own mini Ethiopia in the land of our refuge.*

"*Founded in 1984, ESFNA is a non-profit organization dedicated to promote the rich Ethiopian culture and heritage as well as building positive environments within Ethiopian-American communities in North America. Its mission is Bringing Ethiopians Together to network, support the business community, empower the young by providing scholarships and mentoring program [sic], primarily using soccer tournaments, other sports activities and cultural events as vehicles. ESFNA, by virtue of its status is non-political, non-religious and non-ethnic. We adhered to this position all along as legally expected and aligned with our bylaws*." (Underlining added.)

In August 2016, Teferi filed the instant action against ESF alleging causes of action for Defamation (libel) and Unfair Business

Practices (Bus. & Prof. Code, § 17200 et seq.) Teferi alleged he was defamed, (by the underlined portion of) the February 9, 2016 press release, because it represented and published as "fact" to members of ESF, and Teferi's friends, relative and acquaintances, "defamatory statements . . . describ[ing] [Teferi] as a liar, criminal, thief; a devious and dishonest person; a traitor to the Ethiopian community; a person who wishes to divide and harm his own community and culture; a person who bends laws and rules to harm the Ethiopian community; a person who [is] a 'detractor' to the Ethiopian community; a person who committed an 'assault' against the Ethiopian community; a person who Ethiopians must be vigilant against; and a person who has 'inflicted' harm against the Ethiopian community." Teferi alleged that, at the time ESF maliciously published the foregoing unprivileged and purportedly defamatory statements, ESF knew the statements to be untrue or failed to use reasonable care to determine their truth or falsity before publication, and "published the foregoing statements to harm and damage [Teferi], and to punish [him] for participating in privileged conduct [the prior litigation]."

ESF filed a special motion to strike (anti-SLAPP). (§ 425.16.) It argued the statements at issue were constitutionally protected activity, i.e., statements made in connection with the parties' prior litigation (§ 425.16, subd. (e)), and that Teferi had no probability of prevailing because the statements were protected by the litigation and "fair reporting" privileges. (Civ. Code, § 47, subds. (b)(2), (d)(1)(A).) ESF also argued that the derivative Unfair Business Practices claim, as to

which it was not properly a defendant—and which was premised on the same allegedly libelous statements—was fatally defective.

In response, Teferi argued that ESF could not satisfy the first prong of the SLAPP test, i.e., show that the speech at issue was constitutionally protected activity. Further, even if ESF could meet that test, Teferi argued he would likely prevail because the internet publication of the press release was not protected by either the litigation or fair reporting privileges.

Prior to oral argument on February 14, 2017, the trial court issued a tentative ruling granting the anti-SLAPP motion on grounds not briefed by the parties. The court concluded that ESF's motion was meritorious because ESF's website was a public forum and the remarks at issue, although matters of public interest, were nonactionable statements of general opinion. The parties requested and received an opportunity to submit supplemental briefing. On April 10, 2017, after considering the supplemental briefs and previously filed documents, the court granted ESF's motion. Teferi timely appealed.

On August 9, 2017, the trial court granted ESF's motion for attorney fees and costs incurred in connection with its successful anti-SLAPP motion. Teferi timely appealed. We have consolidated the two appeals.

DISCUSSION

Teferi contends that the order granting the anti-SLAPP motion must be reversed because the trial court granted the motion based on its erroneous conclusion that ESF's press release was a "matter in the

public interest" and also erred in failing to find that the press release contained defamatory statements of fact, rather than opinion. Teferi also maintains that ESF's fee award flowed from the court's erroneous ruling, and must be reversed. We conclude otherwise.

1. *Governing Legal Principles and the Standard of Review*

A SLAPP suit is a meritless lawsuit brought primarily to chill or punish a defendant's exercise of the constitutional right of petition or free speech. (*Equilon Enterprises v. Consumer Cause, Inc*. (2002) 29 Cal.4th 53, 60 (*Equilon*).) The anti-SLAPP statute provides a procedure to weed out such meritless claims arising from protected activity early in litigation. "Resolution of an anti-SLAPP motion involves two steps. First, the defendant must establish that the challenged claim arises from activity protected by section 425.16. [Citation.] If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success. [The Supreme Court has] described this second step as a 'summary–judgment–like procedure.' [Citation.] The court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law. [Citation.] '[C]laims with the requisite minimal merit may proceed.' [Citation.]" (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384–385, fn. omitted (*Baral*).) "'Only a cause of action that satisfies

both prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning and lacks even minimal merit—is a SLAPP, subject to being stricken under the statute.' [Citation.]" (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 278–279.) We review the trial court's rulings on an anti-SLAPP motion under a de novo standard of review, applying the same two-step process as the trial court. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325.)

Section 425.16 provides: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech . . . in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).) An "'act in furtherance of a person's right of petition or free speech . . . in connection with a public issue' includes: . . . (2) any written or oral statement . . . made in connection with an issue under consideration or review by a . . . judicial body, or any other official proceeding authorized by law, (3) any written or oral statement . . . made in a . . . public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the . . . constitutional right of free speech in connection with a public issue or an issue of public interest." (§ 425.16, subd. (e)(2), (3) & (4).)

2. *ESF Made a Threshold Showing that Teferi's Claims Arose from Protected Activity*

The party filing an anti-SLAPP motion has the initial burden to make a prima facie showing that one or more causes of action arose from protected activity. (*Equilon, supra*, 29 Cal.4th at p. 67; see § 425.16, subd. (e).) Teferi maintains that the court erred in finding the disparaging remarks made by ESF on its website, which form the factual bases for his claims, were "of public interest" and arose out of protected activity under section 425.16.[3] He insists the statements at issue are unconnected to a public issue because, as this Court found as a matter of law in *ESFAN,* he is not a public figure. (*ESFAN, supra*, at p. 8.) Teferi also contends that here, as in *ESFAN*, it is far from clear that there was a public controversy, i.e. a topic of widespread, public interest, or which could have direct and substantial ramifications for a large number of people beyond the participants. (*Ibid*.)

First, statements need not involve a public figure to be protected under the anti-SLAPP statute. Section 425.16 "governs even private communications, so long as they concern a public issue." (*Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883, 897; *Terry v. Davis Community Church* (2005) 131 Cal.App.4th 1534, 1546 [same]; see *Hecimovich v. Encinal School Parent Teacher Organization* (2012) 203 Cal.App.4th

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[3] There is no dispute that ESF's website is a public forum. (See *Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 41, fn. 4 [publicly available website is a public forum under section 425.16].)

450, 467 [statements made on social networking site by a mother about her daughter's ex-boyfriend were matters of public interest as other visitors to website had an interest in knowing about the boy's character]; see also *Piping Rock Partners v. David Lerner Associates* (N.D.Cal. 2013) 946 F.Supp.2d 957, 969 [online posts about plaintiffs' character and business practices constituted matters of public interest under SLAPP statute, which "does not require a statement to be serious or truthful in order to concern an issue of public interest"].)

The question is whether the trial court correctly found that ESF's statements are matters of public interest. ""[A]n issue of public interest" . . . need not be "significant" to be protected by the anti-SLAPP statute—it is enough that it is one in which the public takes an interest.'" (*FilmOn.com v. DoubleVerify, Inc.* (2017) 13 Cal.App.5th 707, 716-717.) A defendant's burden on the first prong is not onerous. The defendant need only make a prima facie showing that the plaintiff's claims arose from defendant's constitutionally protected free speech. (See *Governor Gray Davis Com. v. American Taxpayers Alliance* (2002) 102 Cal.App.4th 449, 456.) "'The Legislature did not intend that in order to invoke the special motion to strike the defendant must first establish [his or] her actions are constitutionally protected under the First Amendment as a matter of law.' [Citation.] 'Instead, under the statutory scheme, a court must generally presume the validity of the claimed constitutional right in the first step of the anti-SLAPP analysis, and then permit the parties to address the issue in the second step of the analysis, if necessary. [Citation.] Otherwise, the second step would

become superfluous in almost every case, resulting in an improper shifting of the burdens.'" (*Id.* at p. 458.)

Section 425.16 does not define "public interest" or "public issue." Nevertheless, in *Nygard, Inc. v. Uusi–Kerttula* (2008) 159 Cal.App.4th 1027, the court explained that "[s]ection 425.16 [mandates] that its provisions 'shall be construed broadly' to safeguard 'the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.' [Citation.]" (*Id.* at p. 1039.) Accordingly, the term "public interest" has commonly been construed to include private conduct that impacts a broad segment of society or that affects a community in a manner similar to that of a governmental entity. (*Cross v. Cooper* (2011) 197 Cal.App.4th 357, 371–372.)

For example, in *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468 (*Damon*), a former manager of a homeowners association brought a defamation action against its members and members of the board of that association who published articles or made public statements critical of his performance. The court observed that "[a]lthough the allegedly defamatory statements were made in connection with the management of a private homeowners association, they concerned issues of critical importance to a large segment of our local population. 'For many Californians, the homeowners association functions as a second municipal government . . . .' [Citation.]" (*Id.* at p. 479.) Accordingly, defendants' statements concerned a matter of public interest because "they concerned the very manner in which this group of more than 3,000 individuals would be governed—an inherently

political question of vital importance to each individual and to the community as a whole." (*Ibid.*)

Similarly, in *Cabrera v. Alam* (2011) 197 Cal.App.4th 1077, the court held that statements made during an annual meeting of a homeowners' association concerned a matter of public interest. There, the past president of the association (the plaintiff), campaigning on behalf of certain candidates for the board, accused a current board member (the defendant) of mismanaging the association's finances. In response, the defendant, seeking reelection, accused the plaintiff of stealing money from and defrauding the association. (*Id.* at p. 1081.) The trial court denied the defendant's SLAPP motion, concluding that the plaintiff's allegedly defamatory statement had not been made in connection with an issue of public interest. (*Id.* at p. 1085.) The appellate court reversed. As that court explained, "statements made in connection with elections to the board of directors constitute a public issue in that such elections affect all members of the homeowners association and 'concern[ ] a fundamental political matter—the qualifications of a candidate to run for office.'" (*Id.* at p. 1089, quoting *Damon, supra*, 85 Cal.App.4th at p. 479.)

A matter of legitimate concern to a substantial number of people constitutes a matter of public interest. (See *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.* (1985) 472 U.S. 749, 762; see *Chaker v. Mateo* (2012) 209 Cal.App.4th 1138, 1145 ["A matter of public interest should be something of concern to a substantial number of people . . . [and] may encompass activity between private people"]; *Friedman v. DirecTV*

(C.D. Cal. 2015) 262 F.Supp.3d 1000, 1004 [statements about fantasy sports league were matters of public interest under section 425.16, given "widespread public interest in . . . fantasy sports"]; *Piping Rock Partners v. David Lerner Associates, supra,* 946 F.Supp.2d at pp. 968-969 [online posts about the plaintiffs' character and business practices were a matter of public interest because, under California law, a statement need not "be serious or truthful . . . to concern an issue of public interest"]; *Averill v. Superior Court* (1996) 42 Cal.App.4th 1170, 1175 [statements regarding placement of a shelter for battered women that had been a subject of considerable public controversy, including local land use hearings was a matter of public interest].)

One court has found that the public interest requirement of the anti-SLAPP statute is satisfied if the issue is of interest to a discrete but definable portion of the public (e.g. a private group or organization), "the constitutionally protected activity must, at a minimum, occur in the context of an ongoing controversy, dispute or discussion, such that it warrants protection by a statute that embodies the public policy of encouraging *participation* in matters of public significance." (*Du Charme v. International Brotherhood of Electrical Workers* (2003) 110 Cal.App.4th 107, 119 (*Du Charme*).) In *Du Charme*, a union trustee posted a statement on the local's website stating that its business manager and assistant business manager (plaintiff) were removed from office for financial mismanagement. Plaintiff sued the trustee and the local (defendants) for defamation, and defendants filed a SLAPP motion. On appeal, the court found the statement at issue did not concern a matter of public interest because the statements were not

made in the context of an ongoing controversy, dispute, or discussion about the issue within the community. (*Id.* at p. 118.)

ESF is a nonprofit sports federations "dedicated to promot[ing] . . . Ethiopian culture [and] Bringing Ethiopians Together to network, support the business community, empower the young by providing scholarships and mentoring program[s]." The statements made here concerned ESF's opinion regarding a perceived threat posed to the Ethiopian community as a whole, and alerted members of that community of the need to remain vigilant against efforts like the one it believed had been launched by Teferi to "tear down formidable organizations that promote . . . culture, history, and respect . . . for [the] rich [Ethiopian] heritage." The statements posted in a public forum advised ESF's members and the larger Ethiopian community of actions ESF had taken and intended to take in the future to limit its liability, including addressing gaps in ESF's bylaws and the retention of counsel to provide legal guidance on an ongoing basis. These were clearly issues that would affect, and thus be of interest to members of ESF and the Ethiopian community at large, i.e., a discrete but substantial portion of the public. Thus, we conclude that ESF satisfied its burden to show that Teferi's defamation claim arose from protected activity under section 425.16.[4]

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[4] Our conclusion makes it unnecessary to address the parties' arguments regarding application of the litigation privilege. (Civ. Code, § 47, subd. (b).)

3. *Teferi Failed to Demonstrate a Reasonable Probability of Prevailing on the Merits of His Claims*

Once the defendant makes the required showing on a SLAPP motion, the burden shifts to the plaintiff to demonstrate a probability that he will succeed on the merits of his claims. (*Baral, supra,* 1 Cal.5th at p. 384; *Hardin v. PDX, Inc*. (2014) 227 Cal.App.4th 159, 164.) The plaintiff must do so with competent, admissible evidence. (*Barker v. Fox & Associates* (2015) 240 Cal.App.4th 333, 348; *Kreeger v. Wanland* (2006) 141 Cal.App.4th 826, 831.) We decide this step of the analysis on consideration of "the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (§ 425.16, subd. (b); *Optional Capital, Inc. v. DAS Corp.* (2014) 222 Cal.App.4th 1388, 1398.) We "do not weigh credibility, nor do we evaluate the weight of the evidence. Instead, we accept as true all evidence favorable to the plaintiff." (*Burrill v. Nair* (2013) 217 Cal.App.4th 357, 378–379, disapproved in part in *Baral*, *supra*, at p. 396, fn. 11.) We consider opposing evidence only to the extent that it defeats plaintiff's showing as a matter of law. (*Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 37 Cal.App.4th 855, 867.)

This second step has been described as a "'summary-judgment-like procedure.'" (*Baral, supra*, 1 Cal.5th at p. 384.) The second step inquiry is limited to whether the plaintiff "has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment," evaluating the defendant's showing only to ascertain whether it defeats the plaintiff's claim as a matter of law. (*Id.*

at pp. 384–385.) Only a claim "that satisfies *both* prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning *and* lacks even minimal merit—is a SLAPP, subject to being stricken under the statute." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.)

a. *Defamation Claim*

We need not depart from the trial court's thorough analysis or the well-established authority on which it relied. To prevail on a cause of action for defamation (here, libel), Teferi must plead and prove that ESF published a "false and unprivileged publication . . . which exposes [Teferi] to hatred, contempt, ridicule, or obloquy, or . . . causes him to be shunned or avoided, or . . . has a tendency to injure him in his occupation." (Civ. Code, § 45.) "'The sine qua non of recovery for defamation . . . is the existence of falsehood.' [Citation.] Because the statement must contain a provable falsehood, courts distinguish between statements of fact and statements of opinion . . . . Although statements of fact may be actionable as libel, statements of opinion are constitutionally protected." (*McGarry v. University of San Diego* (2007) 154 Cal.App.4th 97, 112.) "'[T]he question is not strictly whether the published statement is fact or opinion . . . [r]ather, the dispositive question is whether a reasonable fact finder could conclude the published statement declares or implies a provably false assertion of fact.' [Citation.] '[S]atirical, hyperbolic, imaginative, or figurative statements are protected because "the context and tenor of the statements negate the impression that the author seriously is maintaining an assertion of actual fact."' [Citation.] 'Whether a

statement declares or implies a provably false assertion of fact is a question of law for the court to decide [citations], unless the statement is susceptible of both an innocent and a libelous meaning, in which case the jury must decide how the statement was understood.' [Citation.]" (*Ruiz v. Harbor View Community Assn.* (2005) 134 Cal.App.4th 1456, 1471 (*Ruiz*).)

"An opinion or legal conclusion is actionable only "'if it could reasonably be understood as declaring or implying actual facts capable of being proved true or false.'" [Citation.] Thus, an opinion based on implied, undisclosed facts is actionable if the speaker has no factual basis for the opinion. [Citation.] An opinion is not actionable if it discloses all the statements of fact on which the opinion is based and those statements are true. [Citation.] An opinion is actionable if it discloses all the statements of fact on which the opinion is based and those statements are false. [Citation.] In determining whether a statement is actionable opinion, we examine the totality of the circumstances, starting with the language of the allegedly defamatory statement itself. [Citation.]" (*Ruiz, supra*, 134 Cal.App.4th at p. 1471.)

According to the complaint and the declaration Teferi submitted in opposition to the SLAPP motion, Teferi's claim of defamation arose from statements culled almost exclusively from the eighth paragraph of the press release which he alleges characterize him, among other things, "as a 'detractor' to [his] people," who "pursued a frivolous 'assault' on the Ethiopian Community," and "a person who committed an 'assault' against ALL Ethiopians." In addition, Teferi declared that the "Press Release accuses [him] of 'betrayal'" of being a person whom

"all Ethiopians should be 'vigilant' against," and "directly and indirectly states that [he] inflicted harm upon the Ethiopian Community." He maintains that the press release "exposed [him] to 'hatred, contempt, ridicule, or obloquy," and said he "should be 'shunned or avoided' by members of the Ethiopian Community."

We reject Teferi's contention for the reasons it was rejected by the trial court: "Under the totality of circumstances, . . . this passage reflects an *entirely non-actionable* statement of general opinion." Although elsewhere the press release reiterates ESF's now discredited contention that Teferi's termination was involuntary, the specific statements in the press release at issue here "cannot be construed as either declaring or implying actual facts capable of being proved true or false. At best, ESF's statement more or less contains generalities." That is, the statements in the press release constitute ESF's attempt to explain the context of and reasons for its continued pursuit of the prior litigation, the efforts it has undertaken to avoid similar future problems and its role in rallying (or unifying) the Ethiopian community. Accordingly, "[Teferi] cannot establish a 'reasonable probability' of prevailing on his cause of action for defamation."

Teferi's opening brief focuses on ESF's publication in the second and third paragraphs of the press release of statements regarding his "involuntary removal" and purported "impeachment" in January 2003 from his position on the Board of Directors of ESF, defamatory assertions of fact rejected in *ESFNA*. (*ESFNA, supra*, at pp. 9-11.) But these statements do not form the basis for Teferi's claim of defamation in *this* action. Indeed, they are not even mentioned in the complaint.

Rather, as stated above, the allegations here relate specifically and solely to statements in paragraph seven of the press release, none of which address specific circumstances surrounding Teferi's departure from ESF's Board of Directors.[5]

The trial court got it right. Teferi cannot establish a reasonable probability of prevailing on his defamation claim.[6]

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[5] At oral argument, in response to the Court's query, Teferi's counsel stated that the principal basis for the defamation claim was that ESF's press release (not attached to the complaint) contains the defamatory statement of fact that Teferi was involuntarily removed. Counsel insisted this contention had specifically been alleged in the complaint. The record reveals otherwise. The complaint alludes to the parties' prior litigation. However, the allegations regarding ESF's libelous statements of fact relate solely to statements in paragraph seven of the press release.

[6] The trial court rejected Teferi's procedural challenge that ESF's motion was "fatally defective," and the court lacked jurisdiction to consider the motion, because ESF failed to provide notice as required by California Rules of Court, rule 3.1112 (d) [requiring a motion to identify the moving and opposing parties, briefly state the basis for the motion and relief sought, and identify the specific pleading being challenged]. The court found that Teferi suffered no prejudice as a result of ESF's *de minimis* error. Although Teferi claims he has not waived this argument, he has provided no argument or authority demonstrating error on the part of the trial court. Appellant bears the burden to demonstrate error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 (*Denham*).) When an appellant asserts a point, "but fails to support it with reasoned argument and citations to authority, we treat the point as waived." (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 (*Badie*).) Accordingly, we deem the assertion forfeited.

b. *Teferi has Forfeited the Claim for Unfair Business Practices*

Teferi's opening and reply briefs on appeal each contain a sole paragraph, unsupported by a single citation to legal authority or the record, arguing that he is entitled to injunctive relief under Business and Professions Code section 17200.

It is axiomatic that a judgment is presumed correct, and all presumptions are indulged to support it on matters as to which the record is silent, and an appellant must affirmatively demonstrate error in the proceedings below. (*Denham, supra,* 2 Cal.3d at p. 564.) "Appellate briefs must provide argument and legal authority for the positions taken." (*Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862.) "'A point which is merely suggested . . . with no supporting argument or authority, is deemed to be without foundation and requires no discussion.'" (*Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal.App.3d 612, 619, fn. 2.)

Further, an appellant must support the claim of error by providing an adequate record to support his assertions of error. (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.) It is not the place of this court to construct theories or arguments to undermine the judgment to defeat the presumption of correctness, and we will not search the record seeking error. "When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived." (*Badie, supra,* 67 Cal.App.4th at pp. 784-785; *Shenouda v. Veterinary Medical Bd.* (2018) 27 Cal.App.5th 500, 514–515.) In short,

Teferi failed to sustain his burden on appeal and has forfeited his assignment of error as to the Unfair Business Practices claim.

4. *Attorney Fees and Costs*

A defendant who prevails on a SLAPP motion is "entitled to recover his or her attorney's fees and costs." (§ 425.16, subd. (c).) ESF timely moved for and was awarded its fees and costs following its successful SLAPP motion, and Teferi appealed that ruling. Teferi does not address this issue in his opening brief and, in his reply, contests the fact of the award, but not the amount. He argues only that the fee award must be reversed if the order granting the SLAPP motion is reversed.

We will affirm the order granting the SLAPP motion. The order awarding attorney fees and costs to ESF is also affirmed.

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DISPOSITION

The orders granting respondents' special motion to strike (§ 425.16), and awarding attorney fees and costs are affirmed. Respondents are entitled to their costs and attorney fees on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

MANELLA, P. J.

COLLINS, J.